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2-2358

Appl. No. 09/105,572
Amdt. Dated December 11, 2003
Reply to Office Action of Aug. 13, 2003

REMARKS/ARGUMENTS

This is a Response to Office Action to Office Action dated August 13, 2003. Claims 1-34 and 44-50 are canceled. Claim 41 is amended. Claims 35-43 are pending.

Objections

Claims 31-34 are objected to. Claims 31-34 are canceled, rendering the claim objections moot.

Rejection Under 35 U.S.C. 251

Claims 35-50 are rejected under 35 U.S.C. 251 as being based upon a defective reissue declaration.

35 U.S.C. 251 provides in relevant part: "Whenever any patent is ... deemed wholly or partly inoperative or invalid ... by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall ... reissue the patent"

Applicants have complied with 35 U.S.C. 251, because applicants now seek to claim less than the originally issued claims. The pending claims use the language "only one single mode core" as compared to the originally issued claims "a single-mode core". The United States Court of Appeals for the Federal Circuit stated in KCJ Corporation v. Kinetic Concepts, Inc., 222 F.3d 1351, 1356 (Fed Cir. 2000): "This court has repeatedly emphasized that an indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" Whereas the claim language "a single-mode core" in the originally issued claims carries the meaning of one or more single-mode cores, the pending claims carry the meaning of only one single mode core. Thus, the reissue declaration properly cited the basis that the issued claims were too broad, and complies with 35 U.S.C. 251.

For at least the above reasons, applicants respectfully request withdrawal of the rejection under 35 U.S.C. 251 against claims 35-50.